

APPLICANT:
Thomas G. Brennan

REQUEST: A variance to allow a detached accessory structure to remain within a recorded easement and less than one foot from the rear lot line

HEARING DATE: June 21, 2006

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5506

ZONING HEARING EXAMINER'S DECISION

APPLICANT: Thomas G. Brennan

LOCATION: 303 Regal Drive, Abingdon
Development of Broadview
Tax Map: 56 / Grid: 3F / Parcel: 523 / Lot: 4
First (1st) Election District

ZONING: R3 / Urban Residential District

REQUEST: A variance, pursuant to Sections 267-26C(5)(b) and 267-26C(6) of the Harford County Code, to allow a residential detached accessory structure to remain within a recorded easement and less than one (1) foot from the rear yard lot line in the R3 District.

TESTIMONY AND EVIDENCE OF RECORD:

The Applicant, Thomas G. Brennan, testified he purchased the subject property in 1985, and has been the only owner of the property since that date. The original purchase price was reduced from \$119,000.00 to \$89,000.00, according to Mr. Brennan, because of the unusually severe, sloping rear yard. The photographs in the file indicate that the property is improved by what appears to be an attractive, bi-level home, with a front driveway and front entryway which is roughly at the same elevation as Regal Drive, on which the house fronts.

According to his testimony and application, in 1992 the Applicant hired a contractor to build a shed and deck with walkway to the rear of the property. The purpose of the shed was to provide storage. The Applicant states his storage is very limited in his house, particularly since he has no garage. The storage shed was located to the rear of the property. He relied upon his contractor to obtain the necessary permits. He paid between \$12,500.00 and \$13,000.00 for the construction work. The shed and deck is modeled after a train station and the Applicant also intended to use the shed to store his model train sets. The Applicant explained that the shed and deck is located at the only possible location on the property because it is the only level spot to the rear of his home.

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In October of 2004, Mr. Brennan received a letter from the Harford County Department of Inspections, Licenses and Permits that no building permit had been issued for the deck and shed. Upon obtaining a survey it was discovered that the shed and deck had been constructed partially within a 15 foot Drainage and Utility Easement and within 3 feet of the rear yard lot line. These encroachments are not allowed as a matter of right and accordingly these variances are requested. Mr. Brennan explained that he paid \$1,500.00 for the survey which determined the location of the shed and deck. In fact, the shed was found to encroach over the rear property line by 2.4 feet. (See Applicant's Exhibit No. 6)

The Applicant has obtained an estimate from Van Deusen Construction Company of \$33,000.00 to remove the shed. Its removal will be difficult. Because of the topography of his property a crane cannot be brought onto the property to remove the improvements, and they would have to be taken apart and carried out by hand.

The Applicant also received an estimate from S&L Contractors to remove approximately 4 feet from the shed. The Applicant said this is possible as the shed is built with joists 2 feet apart, which would allow two sections, or up to 4 feet, to be removed. This would remove the encroachment over the property line and would leave the shed approximately 1-1/2 feet off the property line, still within the 3 foot buffer and the 15 foot Drainage and Utility Easement. The cost of removing 4 feet of the shed would be about \$5,000.00.

The same contractor gave the Applicant an estimate of \$10,000.00 to remove the shed, but not the decking. The same contractor gave an estimate of \$20,000.00 - \$25,000.00 to remove all of the improvements.

The Applicant believes the property is unique because of the precipitous change in topography to the rear of the property. The Applicant described a series of photographs showing his house, the back of his house (which he points out demonstrates an approximately 25 foot drop in the yard), the shed and deck area, and the neighbors yards with similar slopes.

The Applicant believes the cost of removing these improvements would constitute a very severe hardship on him. He points out that he did not realize permits were not obtained when he constructed the improvements and did not realize they were encroaching within the setback or Drainage and Utility Easement.

The Applicant does not believe the shed can be moved forward as this would potentially constitute a safety issue due to the steep slope on his property. Contractors have told him the improvements cannot be moved.

The Applicant stated that other properties in his neighborhood have decks and sheds. They are common in the neighborhood. He would plant evergreens and other plantings in order to screen the shed from his neighbors to the rear.

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On cross-examination, the Applicant stated that his lot is generally rectangular in shape, and other neighbors have sloping rear yards, although not as bad as his. The Applicant stated he was aware of the easement area but did not know this constituted a problem in the location of the shed.

The Applicant stated that when he hired a contractor he never saw a permit and never knew if one had been obtained. He described his shed as having dimensions of approximately 12 feet by 20 feet, with the height being about 10 feet. He uses it for garden equipment storage. He has a pull down storage area upstairs in the shed.

The Applicant now uses the subject property as a rental property. His tenants now use the shed for storage. The deck and shed are good features of the property and make it more desirable.

Next testified Kevin Small, offered and accepted as an expert land planner. Mr. Small testified that he understands the two variances which are being requested, and believes they should both be granted. He believes the property of Mr. Brennan is unique. In reaching his conclusion Mr. Small relied upon photograph marked as Attachment 8b, which show the back yards of properties in this area. Mr. Brennan's house sits on a level area, with the lot then dropping very sharply to a broad shallow swale, and then continuing to drop off beyond that. The only other level area is to the very rear of Mr. Brennan's property where the shed and deck are now located.

Mr. Small identified two additional small level areas on Mr. Brennan's property. One is located in an area of about 10 feet directly behind the house. This is not a practical area in which to build a shed. The other area is the swale area which is somewhat level, but too small for the construction of a shed. Furthermore, the construction of improvements to this area would impede water flow and is not accordingly desirable.

Mr. Small described the Applicant's lot as being shallow compared to other lots in the area. The Applicant backs up to homes which have recently been built and which are located on Millwright Circle in the Millstone subdivision. All of these homes have relatively flat rear yards. There are no sheds that Mr. Small was able to identify which attach to or serve any of the homes on Millwright Circle. Mr. Small did identify two properties in Broadview (the subdivision in which the Applicant's home is located) which have sheds. Mr. Small further stated that it is not unusual for a lot in Harford County to be encumbered by a Drainage and Utility Easement. Almost every subdivided lot has such a feature. Behind the Millwright Circle homes, and adjoining their rear property line, lies a 10 foot landscape buffer and a 20 foot Utility Easement.

Mr. Small stated that the Applicant experiences a difficulty. There is simply no other place to put a shed similar in size to that which now exists on Mr. Brennan's property. He believes that once 4 feet is taken off the shed, a visual buffer can be installed.

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Mr. Small disagrees with the Staff Report. He believes that while some other properties have topographical issues, none are affected as severely as is Mr. Brennan's property.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune stated, in echoing the findings of the Staff Report, that the property is not unique. The Applicant has not shown sufficient justification for the granting of the variances. Many properties in the Applicant's subdivision have steep slopes. Many of those properties do not have level areas in which to construct sheds or other outbuildings. The Applicant's situation is not unusual. Mr. McClune also stated that a shed could be located within the 10 foot level area behind the Applicant's house, and decking could also be constructed surrounding that. It may be necessary to do some grading. Furthermore, the decking which Mr. Brennan now has is not wholly within the 15 foot Drainage and Utility Easement. The shed could be located in the area where that non-intrusive decking is now located. Mr. McClune also agreed that the Drainage and Utility Easements are typical in this area.

Upon examination by the Opponents' attorney, Mr. McClune agreed that any hardship experienced by the Applicant is self-created.

In opposition testified Robert Novak, a resident of Lot 4, 306 Millwright Circle in the Millstone subdivision. Mr. Novak has lived in his newly constructed home for about a year and a half. He is a retired Mechanical Engineer. Mr. Novak stated that the shed was at the rear of his home when he moved into his house. It was visible when he moved in. The shed can be seen from Millwright Circle. It looks like a small barn. He believes that its height is not 10 feet, but is closer to 16 feet. Mr. Novak is opposed to the requested variance because the shed is ugly, it is an eye sore, and also since it is located somewhat off the ground, he believes it would tend to harbor animal pests.

The shed is very visible from the street and from other lots. Mr. Novak believes that some of the photos introduced are not totally accurate of the view. Mr. Novak introduced his own photographs which he stated shows the view of the shed from his property and from his neighbors' property. The back of the shed is clearly visible, and has never been screened since Mr. Novak has lived there.

Mr. Novak explained he did not believe the shed was going to be a problem when he originally contracted for his lot. He did not know it would be as visible as it now is. Mr. Novak contracted for his property before his house was built. Once the brush was removed and the lot line was shown, the shed became very clearly visible. Mr. Novak can also see the deck as well as the shed.

Mr. Novak conceded that all homes on Regal Drive have slopes. He does not believe having a slope is a unique feature of homes along Regal Drive. Mr. Novak does not want to see the shed.

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Next testified Sara Stepanian, of 308 Millwright Circle. Ms. Stepanian has also lived on her property for about a year and a half. Ms. Stepanian can plainly see the shed from her house. She is, perhaps, 45 feet away from the shed. She has seen squirrels, rabbits, and ground hogs going under the shed and believes it constitutes a health hazard. She is worried about the animals she saw and she fears the animals will be attracted to the potential habitat which the shed provides. She also thinks the shed is too big and is not characteristic of a normal size shed. Ms. Stepanian could not see the shed when she first bought her lot. She could only see it once the brush had been removed and her house was being built.

Next testified Richard Kutchey, of 302 Millwright Circle. Mr. Kutchey is also familiar with the shed. Mr. Kutchey objects to the variances because he is worried about his property values. He feels very strongly that the continued existence of the shed at that location would very much effect the resale value of his home, and he also has some safety concerns as had been expressed by previous witnesses.

At the conclusion of the hearing the parties were given an opportunity to discuss among themselves potential proposed conditions which would be acceptable to all parties. As a result, by letter dated September 5, 2006, the parties submitted conditions which the parties would ask to be applied to any favorable decision. The conditions agreed to by the parties are as follows:

- A. Applicant will cut eight (8) feet from the rear of the shed which is closest to the properties belonging to the Protestants;
- B. Applicant will paint green the rear of the shed that faces Protestants' properties;
- C. Applicant will install green shingles to the roof of the shed;
- D. Applicant will plant four (4) Leyland Cypress trees between the shed and Protestants' properties, which trees shall be nine to twelve (9-12) feet in height at the time they are planted. The trees shall be planted by Applicant no later than April 30, 2007.
- E. That Applicant will provide a drawing showing the location of the trees to assure that they are strategically placed to provide screening of the shed from Protestants' properties as well as the location of the property line between Applicants' property and Protestants' properties.
- F. All work must be completed no later than April 30, 2007.

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APPLICABLE LAW:

Section 267-26C(5)(b) of the Harford County Code states:

“(b) Residential detached accessory structure: six (6) feet from any principal structure and three (3) feet from side or rear yard lot lines except for lots with recorded easements. For lots with recorded easements, the setback shall be equal to the width of the recorded easement.”

Section 267-26C(6) of the Harford County Code states:

“No accessory use or structure, except fences, shall be located within any recorded easement area.”

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

The Applicant, who has owned his property since 1985 but who has not lived there for some years, has constructed a fairly large, and unusually designed shed which actually encroached over the property's rear setback line. Unfortunately for the Applicant, not only did this shed violation the 3 foot rear yard required setback, it also was built completely across the 15 foot Drainage and Utility Easement along the rear of the Applicant's property. Neither of these encroachments is allowed by Harford County Development Regulations.

As is usually the case in these matters, the simple expedient of obtaining a Harford County Building Permit (which, of course, is required by law), would have revealed to the Applicant before he began construction the problems which he was facing if he continued as planned. However, no building permit was obtained and the shed was constructed in an improper location.

The shed continued to be used by the Applicant and the subsequent occupants of the property for some years until, again unfortunately but not unforeseeably, the property to the rear of the Applicant's property was sold, subdivided, developed and now hosts a residential subdivision. Certain of the homes in the new subdivision have a very clear view of the shed. The shed's obvious location over the property line and its impact into the 15 foot Drainage and Utility Easement is obvious to the neighbors and any passer-by. The neighbors, rightfully so, object. Not only does the shed encroach onto the neighbors' property, it is a fairly significant size and it is impossible for the Applicant to provide any sort of screening.

The Applicant provides little defense for his failure to obtain a building permit. His argument is, instead, that the shed is of such a large size, and his lot has such a downward slope, that it would be difficult and expensive to remove. This argument is not accepted as a valid reason for the granting of the variances requested.

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The hardship or practical difficulty which the Applicant now complains is certainly of his own making. The Department of Planning and Zoning believes there is sufficient level ground on the Applicant's property to build a modestly sized shed, and one in conformity with other sheds in the neighborhood. In fact, much of the decking surrounding the existing shed is outside of the 15 foot Drainage and Utility Easement. If the shed were located at a point where the existing decking is now located, no variance at all would be necessary. Accordingly, the Applicant's argument that topographical conditions prohibit the construction of a shed elsewhere is rejected.

It is further found that an impact into the 3 foot rear yard setback as requested by the Applicant would adversely effect the adjoining property owners who have vehemently, and with good reason, objected to the clearly visible encroachment of the shed into the relatively minor, but required, 3 foot rear yard setback.

However, the Applicant has obtained a memorandum from the Harford County Department of Public Works dated November 19, 2004, which determined that the location of the accessory structure does not appear to contribute to any drainage problem. That memorandum asserts that the Department of Public Works has no objection to the shed and deck remaining within the easement area subject to the following conditions:

- * The deck and shed shall not be placed on a permanent foundation.
- * If it is shown that either structure contributes to any drainage problems in the future, the structures must be moved out of the easement at the owner's expense.

Consideration is also given to the proposed conditions of the parties which would require the Applicant to remove the last 8 feet of the shed which is closest to the properties belonging to the Protestants, to screen the remaining shed, and to take other efforts to minimize the visual intrusion of the shed. Once 8 feet is removed the shed would then be located approximately 5 feet from the rear yard setback. This would eliminate the encroachment on the adjoining property owners, would eliminate the intrusion into the 3 foot rear yard setback, and would provide sufficient space for the planting of vegetative screening which, hopefully after time, will fully screen the shed from the view of the neighbors. The Hearing Examiner notes that the removal of 8' of the shed will be a significant expense to the Applicant and, while expense of compliance is not a factor which is to be taken into account in this decision, the apparent willingness of the Applicant to meet the genuine concerns of his neighbors in a reasonable fashion is acknowledged.

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In determining whether the shed, as modified by the proposed conditions of the Applicant, should remain at least partially within the 15 foot Drainage and Utility Easement, the testimony of the Applicant and his witness is acknowledged that the property highly slopes downward and to the rear and locating the deck and shed at any other location on the property would be, at best, difficult. It is accordingly found that the configuration and topography of the property cause the Applicant practical difficulty if he were required to conform to the requirements of the Code.

It is further found that the 10 foot intrusion into the 15 foot Drainage and Utility Easement (which will result once the last 8 feet of the shed is removed), will not adversely effect the neighbors or the neighborhood and is, in light of all the circumstances, the minimum relief necessary to meet the reasonable request of the Applicant, and at the same time, take into account the reasonable objections of the neighbors.

CONCLUSION:

For the above reasons it is recommended that the request for a variance to allow a residentially detached accessory structure to remain less than 1 foot from the rear property line is denied; and the variance to allow a residentially detached accessory structure to remain within a recorded easement in the R3 Residential District is approved, subject to the following conditions:

1. Applicant will cut eight (8) feet from the rear of the shed which is closest to the properties belonging to the Protestants;
2. Applicant will paint green the rear of the shed that faces Protestants' properties;
3. Applicant will install green shingles to the roof of the shed;
4. Applicant will plant four (4) Leyland Cypress trees between the shed and Protestants' properties, which trees shall be nine to twelve (9-12) feet in height at the time they are planted. The trees shall be planted by Applicant no later than April 30, 2007.
5. That Applicant will provide a drawing showing the location of the trees to assure that they are strategically placed to provide screening of the shed from Protestants' properties as well as the location of the property line between Applicants' property and Protestants' properties.
6. All work must be completed no later than April 30, 2007.

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7. The deck and shed shall not be placed on a permanent foundation.
8. If it is shown that either structure contributes to any drainage problems in the future, the structures must be moved out of the easement at the owner's expense.

Date: October 6, 2006

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on NOVEMBER 3, 2006.